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**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

February 16, 2012

Adrian Aartman, President
Eric Meidenbauer, Properties and Environmental Manager
Mohammad Khan, Service Manager
Jim Aartman, Inc.
805 S. Locust Ave.
Ripon, CA 95366

Eric Meidenbauer, Properties and Environmental Manager
Aartman Transportation Corporation
666 Grand Ave., Suite 3100
Des Moines, IA 50309-2500

**Re: Notice of Violations and Intent to File Suit Under the Federal Water
Pollution Control Act**

Dear Mr. Aartman, Mr. Meidenbauer, and Mr. Khan:

I am writing on behalf of California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act (the "Act") that CSPA believes are occurring at Jim Aartman, Inc. ("Facility") located at 805 S. Locust Avenue in Ripon, California. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of the Stanislaus River, the San Joaquin River and other California waters. This letter is being sent to you as the responsible owners, officers, or operators of the Facility (all recipients are hereinafter collectively referred to as "JAI").

This letter addresses JAI's unlawful discharge of pollutants from the Facility through channels that flow into the Stanislaus River. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. CA S000001, California Regional Water Quality Control Board, Central Valley Region ("Regional Board") Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ (hereinafter "General Permit"). The WDID identification number for the Facility listed on documents submitted to the Regional Board is 5S391020733. The Facility is engaged in ongoing violations of the substantive and

procedural requirements of the General Permit.

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA") and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, JAI is hereby placed on formal notice by CSPA that, after the expiration of sixty days from the date of this Notice of Violations and Intent to Sue, CSPA intends to file suit in federal court against JAI, Eric Meidenbauer, and Mohammad Khan under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the Order. These violations are described more extensively below.

I. Background.

On March 22, 2007, the Regional Board received and processed JAI's Notice of Intent to Comply with the Terms of the General Permit to Discharge Storm Water Associated with Industrial Activity ("NOI"). In its NOI, JAI certifies that the Facility is classified under SIC code 4231 ("terminal maintenance facilities for motor freight"). The Facility collects and discharges storm water from its 6.95-acre industrial site through at least two outfalls that discharge into channels that flow into the City of Ripon's municipal storm drain system, which then empties into the Stanislaus River, when then flows into the San Joaquin River.

The Regional Board has identified beneficial uses of the Central Valley Region's waters and established water quality standards for the Stanislaus River, the San Joaquin, and their tributaries in "The Water Quality Control Plan (Basin Plan) for the California Regional Water Quality Control Board, Central Valley Region – The Sacramento River Basin and The San Joaquin River Basin," generally referred to as the Basin Plan. *See* http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/sacsjr.pdf. The beneficial uses of the Stanislaus River, the San Joaquin, and their tributaries include among others water contact recreation, non-contact water recreation, municipal and domestic water supply, endangered and threatened species habitat, shellfish harvesting, and fish spawning. The non-contact water recreation use is defined as "[u]ses of water for recreational activities involving proximity to water, but where there is generally no body contact with water, nor any likelihood of ingestion of water. These uses include, but are not limited to, picnicking, sunbathing, hiking, camping, boating, . . . hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities." Basin Plan at II-1.00 – II-2.00. Visible pollution, including visible sheens and cloudy or muddy water from industrial areas, impairs people's use of the Stanislaus River and San Joaquin River for contact and non-contact water recreation.

The Basin Plan establishes water quality standards for the Stanislaus River, the San Joaquin River, and their tributaries. It includes a narrative toxicity standard which states that

"[a]ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life." *Id.* at III-8.01. It provides that "[w]ater shall not contain floating material in amounts that cause nuisance or adversely affect beneficial uses." *Id.* at III-5.00. It provides that "[w]ater shall be free of discoloration that causes nuisance or adversely affects beneficial uses." *Id.* It provides that "[w]aters shall not contain suspended materials in concentrations that cause nuisance or adversely affect beneficial uses." *Id.* at III-7.00. The Basin Plan also prohibits the discharges of oil and grease, stating that "[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses." *Id.* at III-6.00. The Basin Plan provides that the pH shall not be depressed below 6.5 nor raised above 8.5. *Id.*

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable ("BAT") and best conventional pollutant control technology ("BCT"). The following benchmarks have been established for pollutants discharged by JAI: pH – 6.0 - 9.0 units; total suspended solids ("TSS") – 100 mg/L, oil and grease ("O&G") – 15 mg/L, and total organic carbon ("TOC") – 110 mg/L. The State Water Quality Control Board also has proposed adding a benchmark level to the General Permit for specific conductance (200 µmho/cm).

II. Alleged Violations of the NPDES Permit.

A. Discharges in Violation of the Permit.

JAI has violated and continues to violate the terms and conditions of the General Industrial Storm Water Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities or authorized non-storm water discharges that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand ("BOD"), and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

In addition, Discharge Prohibition A(1) of the General Permit prohibits the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the General Permit prohibits storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

Receiving Water Limitation C(1) of the General Industrial Storm Water Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the General Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan. The General Permit does not authorize the application of any mixing zones for complying with Receiving Water Limitation C(2). As a result, compliance with this provision is measured at the Facility's discharge monitoring locations.

JAI has discharged and continues to discharge storm water with unacceptable levels of total suspended solids, specific conductivity, oil & grease, pH, and other pollutants in violation of the General Permit. JAI's sampling and analysis results reported to the Regional Board confirm discharges of specific pollutants and materials other than storm water in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

On October 30, 2008, the Facility discharged storm water with a pH level of 6.16 (Outfall B), and on November 20, 2009, the Facility discharged storm water with pH levels of 6.33 (Outfall A) and 6.1 (Outfall B). On the following dates, the Facility reported visual observations of discharged storm water at both outfalls indicating that such water was either cloudy or dirty, in violation of the narrative standard requiring that water be free from discoloration: April 11, 2011; April 7, 2009; October 30, 2008; and December 18, 2007. These discharges of pollutants from the Facility thus have contained concentrations of pollutants in excess of numeric and narrative water quality standards established in the Basin Plan and have thus violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2). They are evidence of ongoing violations of Effluent Limitation B(3) of the General Industrial Storm Water Permit.

The following discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) and are evidence of ongoing violations of Effluent Limitation B(3) of the General Industrial Storm Water Permit.

Date	Parameter	Observed Concentration	EPA Benchmark Value	Outfall (as identified by the Facility)
3/18/2011	Total Suspended Solids	636 mg/L	100 mg/L	Outfall A
3/18/2011	Specific Conductivity	284 µmho/cm	200 µmho/cm (proposed)	Outfall A
3/18/2011	Total Suspended Solids	331 mg/L	100 mg/L	Outfall B
3/18/2011	Specific Conductivity	359 µmho/cm	200 µmho/cm (proposed)	Outfall B
4/11/2010	Total Suspended Solids	138 mg/L	100 mg/L	Outfall A
4/11/2010	Total Suspended Solids	473 mg/L	100 mg/L	Outfall B

4/11/2010	Specific Conductivity	3940 µmho/cm	200 µmho/cm (proposed)	Outfall B
11/20/2009	Total Suspended Solids	154 mg/L	100 mg/L	Outfall A
11/20/2009	Specific Conductivity	850 µmho/cm	200 µmho/cm (proposed)	Outfall A
11/20/2009	Total Suspended Solids	169 mg/L	100 mg/L	Outfall B
11/20/2009	Specific Conductivity	6260 µmho/cm	200 µmho/cm (proposed)	Outfall B
10/30/2008	Total Suspended Solids	1870 mg/L	100 mg/L	Outfall A
10/30/2008	Specific Conductivity	603 µmho/cm	200 µmho/cm (proposed)	Outfall A
10/30/2008	Oil & Grease	20 mg/L	15 mg/L	Outfall A
10/30/2008	Total Suspended Solids	633 mg/L	100 mg/L	Outfall B
10/30/2008	Specific Conductivity	2910 µmho/cm	200 µmho/cm (proposed)	Outfall B
1/4/2008	Total Suspended Solids	132 mg/L	100 mg/L	Outfall A

The information in the above table reflects data gathered from JAI's self-monitoring during the 2007-2008, 2008-2009, 2009-2010, and 2010-2011 wet seasons. CSPA alleges that during each of those wet seasons and continuing through today, JAI has discharged storm water contaminated with pollutants at levels that exceed one or more applicable EPA Benchmarks, including but not limited to each of the following:

Total Suspended Solids – 100 mg/L
Oil & Grease – 15 mg/L
Specific Conductivity – 200 µmho/cm (proposed)

CSPA's investigation, including its review of JAI's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of applicable water quality standards, EPA's benchmark values and the State Board's proposed benchmark for electrical conductivity, indicates that JAI has not implemented BAT and BCT at the Facility for its discharges of total suspended solids, specific conductivity, oil & grease, and other pollutants, in violation of Effluent Limitation B(3) of the General Permit. JAI was required to have implemented BAT and BCT by no later than October 1, 1992, or since the date the Facility opened. Thus, JAI is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

In addition, the numbers listed above indicate that the Facility is discharging polluted storm water in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Permit. CSPA alleges that such violations also have occurred and will occur on other rain dates, including every significant rain event that has occurred since February 16, 2007 and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CSPA alleges that JAI has discharged storm water containing

impermissible levels of total suspended solids, specific conductivity, and oil & grease in violation of Effluent Limitation B(3), Discharge Prohibitions A(1) and A(2), and Receiving Water Limitations C(1) and C(2) of the General Permit.¹

On information and belief, CSPA also alleges that JAI has been discharging non-storm water in violation of Discharge Prohibition A(1) every day that the Facility has been in operation for the past five years. CEH's investigations indicate that JAIS has regularly discharged non-storm water from the Facility to an adjacent municipal storm drain on South Locust Ave as well as to storm drains contained within the Facility during dry days without any rain during the past five years.

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any of these pollutants constitutes a separate violation of the General Industrial Storm Water Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, JAI is subject to penalties for violations of the General Permit and the Act since February 16, 2007.

B. Failure to Develop and Implement an Adequate Monitoring and Reporting Program

Section B of the General Permit describes the monitoring requirements for storm water and non-storm water discharges. Facilities are required to make monthly visual observations of storm water discharges (Section B(4)) and quarterly visual observations of both unauthorized and authorized non-storm water discharges (Section B(3)). Section B(5) requires facility operators to sample and analyze at least two storm water discharges from all storm water discharge locations during each wet season. Section B(7) requires that the visual observations and samples must represent the "quality and quantity of the facility's storm water discharges from the storm event."

The above referenced data was obtained from the Facility's monitoring program as reported in its Annual Reports submitted to the Regional Board. This data is evidence that the Facility has violated various Discharge Prohibitions, Receiving Water Limitations, and Effluent Limitations in the General Permit. To the extent the storm water data collected by JAI is not representative of the quality of the Facility's various storm water discharges and that the Facility failed to monitor all qualifying storm water discharges, CSPA, alleges that the Facility's monitoring program violates Sections B(3), (4), (5) and (7) of the General Permit. In addition, JAI also violated Section B(5) by failing to monitor two of its storm water discharges for total suspended solids, pH, and specific conductivity.

The above violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, JAI is

¹ The rain dates are all the days when 0.1" or more rain fell as calculated by triangulating precipitation data from three weather stations in Modesto (two different stations) and Manteca. These stations form a triangle around the Facility.

subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since February 16, 2007.

C. Failure to Prepare, Implement, Review and Update an Adequate Storm Water Pollution Prevention Plan.

Section A and Provision E(2) of the General Industrial Storm Water Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan ("SWPPP") no later than October 1, 1992. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to the General Permit to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 1, 1997.

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility and identify and implement site-specific best management practices ("BMPs") to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (General Permit, Section A(2)). The SWPPP must include BMPs that achieve BAT and BCT (Effluent Limitation B(3)). The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (General Permit, Section A(3)); a site map showing the facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (General Permit, Section A(4)); a list of significant materials handled and stored at the site (General Permit, Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (General Permit, Section A(6)).

The SWPPP also must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective (General Permit, Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (General Permit, Section A(9),(10)).

CSPA's investigation of the conditions at the Facility as well as JAI's Annual Reports indicate that JAI has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. JAI has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. JAI has been in continuous violation of Section A and Provision E(2) of the General Permit every day since February 16, 2007, at the very latest, and will continue to be in violation every day that JAI fails to prepare, implement, review, and

update an effective SWPPP. JAI is subject to penalties for violations of the Order and the Act occurring since February 16, 2007.

D. Failure to File True and Correct Annual Reports.

Section B(14) of the General Permit requires dischargers to submit an Annual Report by July 1st of each year to the executive officer of the relevant Regional Board. The Annual Report must be signed and certified by an appropriate corporate officer. General Permit, Sections B(14), C(9), (10). Section A(9)(d) of the General Industrial Storm Water Permit requires the discharger to include in their annual report an evaluation of their storm water controls, including certifying compliance with the General Industrial Storm Water Permit. *See also* General Permit, Sections C(9) and (10) and B(14).

For the previous five years, JAI and its agents, Mohammad Khan, Gerry Hoffman, and Carol Raya, inaccurately certified in their Annual Reports that the facility was in compliance with the General Permit. Consequently, JAI has violated Sections A(9)(d), B(14) and C(9) & (10) of the General Industrial Storm Water Permit every time JAI failed to submit a complete or correct report and every time JAI or its agents falsely purported to comply with the Act. JAI is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since February 16, 2007.

IV. Persons Responsible for the Violations.

CSPA puts JAI, Adrian Aartman, Eric Meidenbauer, and Mohammad Khan on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts JAI, Adrian Aartman, Eric Meidenbauer, and Mohammad Khan on notice that it intends to include those persons in this action.

V. Name and Address of Noticing Parties.

The name, address and telephone number of California Sportfishing Protection Alliance is as follows:

Bill Jennings, Executive Director;
California Sportfishing Protection Alliance,
3536 Rainier Avenue,
Stockton, CA 95204
Tel. (209) 464-5067
Fax (209) 464-1028
E-Mail: deltakeep@me.com

VI. Counsel.

CSPA has retained our office to represent it in this matter. Please direct all communications to:

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VII. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects JAI to a penalty of up to \$32,500 per day per violation for all violations occurring during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit through January 12, 2009, and a maximum of \$37,500 per day per violation for all violations occurring after January 12, 2009. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. CSPA intends to file a citizen suit under Section 505(a) of the Act against JAI and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, CSPA would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, CSPA suggests that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. CSPA does not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Michael R. Lozeau
Lozeau Drury LLP
Attorneys for California Sportfishing Protection Alliance

SERVICE LIST

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ATTACHMENT A

Rain Dates, Jim Aartman, Inc., Ripon, California

2/22/2007	4/7/2009	12/5/2010
2/25/2007	5/1/2009	12/8/2010
2/26/2007	9/14/2009	12/14/2010
9/22/2007	10/13/2009	12/17/2010
10/10/2007	12/7/2009	12/22/2010
10/12/2007	12/11/2009	12/25/2010
11/11/2007	12/12/2009	12/28/2010
12/6/2007	12/27/2009	12/29/2010
12/7/2007	1/13/2010	1/1/2011
12/18/2007	1/17/2010	1/2/2011
1/3/2008	1/18/2010	1/30/2011
1/4/2008	1/19/2010	2/16/2011
1/5/2008	1/20/2010	2/17/2011
1/8/2008	1/21/2010	2/18/2011
1/22/2008	1/25/2010	2/19/2011
1/23/2008	1/26/2010	2/24/2011
1/24/2008	2/21/2010	2/25/2011
1/27/2008	2/23/2010	3/6/2011
1/31/2008	3/2/2010	3/15/2011
2/19/2008	3/3/2010	3/18/2011
2/20/2008	3/12/2010	3/19/2011
2/21/2008	4/4/2010	3/24/2011
11/26/2008	4/11/2010	3/26/2011
12/14/2008	4/12/2010	5/15/2011
1/22/2009	4/20/2010	5/18/2011
1/23/2009	4/21/2010	6/4/2011
2/5/2009	5/25/2010	6/5/2011
2/6/2009	10/23/2010	6/28/2011
2/11/2009	10/24/2010	10/4/2011
2/13/2009	11/7/2010	10/5/2011
2/15/2009	11/19/2010	11/5/2011
2/16/2009	11/20/2010	12/15/2011
2/17/2009	11/23/2010	2/13/2012
3/4/2009	11/27/2010	
3/21/2009	12/4/2010	

Notice of Violations and Intent to File Suit